

STATE OF MICHIGAN
COURT OF APPEALS

ROMEO INVESTMENT LIMITED,

Plaintiff-Appellant,

v

MICHIGAN CONSOLIDATED GAS
COMPANY,

Defendant-Appellee.

and

WASHINGTON 10 STORAGE COMPANY and
DTE ENERGY COMPANY,

Defendants.

Before: Whitbeck, C.J., and Murphy and Cooper, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order granting partial summary disposition in favor of defendant Michigan Consolidated Gas Company (defendant)¹ under MCR 2.116(C)(7) and (C)(8). We affirm the dismissal of the rescission, fraud, and trespass claims in their entirety. We further affirm the partial dismissal of the breach of contract action, leaving intact claims for breach of contract arising after December 3, 1997. Finally, we reverse the partial dismissal of the unjust enrichment, conversion, and constructive trust claims, in that, those claims should have been dismissed in their entirety.

¹ Defendants Washington 10 Storage Company and DTE Energy Company were dismissed from this action in early 2004. Our reference to "defendant" pertains solely to Michigan Consolidated Gas Company.

Plaintiff and defendant executed an oil and gas lease in May 1976, pursuant to which defendant was granted a leasehold interest for the purpose of exploration, drilling, and extraction of subterranean oil and gas. The lease agreement remained in effect through 1998. As part of the agreement, plaintiff was granted a royalty interest in one-eighth (1/8) of the oil and gas ultimately produced, and plaintiff chose to accept payment in the form of quarterly or monthly royalty payments. A lease addendum provided as follows regarding the amount of payment:

The price used by lessee to determine royalty payments to lessor for gas produced from the lands covered herein and sold or used off the premises covered hereby shall be the highest price per MCF^[2] paid by [defendant] or its affiliated [c]ompanies at the wellhead for products of like quality and quantity at the time gas is first produced and sold or used off the premises, unless and until a higher price is paid for gas sold under the contract containing such price, in which event such higher price shall be used to determine royalty payments to lessor.

Over the years, defendant regularly paid plaintiff periodic royalties until the lease ended in 1998. The crux of plaintiff's complaint was the assertion that defendant had systematically underpaid plaintiff over the entire 22-year lease period from 1976 until 1998 in violation of the above-quoted language from the lease addendum. Plaintiff's position was that defendant was essentially paying a higher price in royalties to Shell Oil Company, which price, under the lease agreement, and specifically the addendum, should have also been paid to plaintiff. Plaintiff's lawsuit was not filed until December 4, 2003. Plaintiff repeatedly argues that it did not become aware of the underpayment until December 2001, at which time it received information indicating a shortfall in payments over the years. Plaintiff vigorously contends that it could not have known of the underpayment, nor have even suspected underpayment, until it received a letter from former MichCon employee John Odinga in December 2001 that suggested the possible underpayment. Plaintiff's first amended complaint contained two counts of rescission and single counts of trespass, breach of contract, fraud, conversion, constructive trust, and unjust enrichment.

On defendant's motion for summary disposition, the trial court found that the claims for fraud, rescission, conversion, breach of contract, unjust enrichment, and constructive trust were all subject to a six-year statute of limitations. The court concluded that the trespass claim was subject to a three-year statute of limitations. With respect to rescission and fraud, the court ruled that those causes of action accrued in 1976 when the lease agreement was executed. The trial court decided not to apply the discovery rule to any of the seven claims. The fraud claim, the first rescission count, and the trespass action were all dismissed as time-barred, with the court additionally finding that the second rescission count failed to state a claim on which relief could be granted. With regard to the remaining four counts, the trial court ruled that, because periodic payments were made under the lease agreement throughout the life of the lease, each time payment was made, allegedly in a deficient amount, a cause of action accrued at that point in

² MCF means "one thousand cubic feet."

time. Considering that the complaint was filed on December 4, 2003, and given that the breach of contract, conversion, unjust enrichment, and constructive trust claims were subject to a six-year statute of limitations, any deficient payments made after December 3, 1997, could still be litigated in the lawsuit, but any claims under those theories relative to payments made on or before that date were time-barred. Plaintiff appealed by leave granted.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).³ We review de novo the applicability of a statute. *Adams Outdoor Advertising, Inc v Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001). We similarly review de novo all other questions of law. *Fraser Twp v Linwood-Bay Sportsman's Club*, 270 Mich App 289, 293; 715 NW2d 89 (2006). Whether the period of limitations was tolled and when the period of limitations ended are questions of law. *Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 46; 698 NW2d 900 (2005).

In addition to the issues raised in the application, this Court's order granting leave to appeal directed the parties to address whether plaintiff's claims were subject to the provisions of Article 2 of the Uniform Commercial Code (UCC), MCL 440.2101 *et seq.* Because both parties have taken the position that the UCC is inapplicable and because defendant never argued its application below, we decline to address the issue any further and accept the parties' positions

³ MCR 2.116(C)(7) provides for summary disposition when a claim is barred by the statute of limitations. Under MCR 2.116(C)(7), this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). This Court must consider the documentary evidence in a light most favorable to the nonmoving party. *Herman v Detroit*, 261 Mich App 141, 143-144; 680 NW2d 71 (2004). If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995). If a factual dispute exists, however, summary disposition is not appropriate. *Id.*

MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may only consider the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997).

for purposes of this appeal only, without independently determining the correctness or soundness of their arguments.

We shall begin our substantive analysis by addressing some preliminary matters. First, we consider the discovery rule. In general, “the period of limitations runs from the time the claim accrues.” MCL 600.5827. Furthermore, a “claim accrues at the time provided in [MCL 600.5829] to [MCL 600.5838], and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.” MCL 600.5827. In *Moll v Abbott Laboratories*, 444 Mich 1, 12; 506 NW2d 816 (1993), our Supreme Court stated that the term “wrong” as used in the general accrual statute, MCL 600.5827, “specified the date on which the defendant’s breach harmed the plaintiff, as opposed to the date on which the defendant breached his duty.” However, the *Moll* Court additionally noted that “our concern about barring a plaintiff’s cause of action prematurely has led to our adoption of the discovery rule under proper circumstances.” *Moll, supra* at 12. Pursuant to the discovery rule, “the plaintiff’s claim accrues when the plaintiff discovers, or through the exercise of reasonable diligence, should have discovered, the two later occurring elements: (1) an injury, and (2) the causal connection between plaintiff’s injury and the defendant’s breach.” *Id.* at 16. Rejecting an argument that a plaintiff should first know the “likely cause” of an injury, the Supreme Court ruled, “Once a claimant is aware of an injury and its possible cause, the plaintiff is aware of a possible cause of action[,]” thereby triggering the commencement of the applicable limitations period. *Id.* at 23-24.

The discovery rule is not a general rule of application; rather, its use has been limited to specific situations, such as in, for example, products liability actions. *Lemmerman v Fealk*, 449 Mich 56, 66; 534 NW2d 695 (1995); see also *Chase v Sabin*, 445 Mich 190, 196-197; 516 NW2d 60 (1994). We affirm the trial court’s decision not to apply the discovery rule to any of the claims raised by plaintiff. This case, at its core, is a breach of contract action for failure to pay the full amount under the lease agreement, regardless of the various labels placed on the numerous causes of action. In *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989), this Court stated, “Simply put, this Court is not bound by plaintiff’s choice of labels for her action because this would exalt form over substance.” That being said, “[a] breach of contract claim accrues on the date of the breach, *not the date the breach is discovered.*” *Michigan Millers Mut Ins Co v West Detroit Bldg Co, Inc*, 196 Mich App 367, 372 n 1; 494 NW2d 1 (1992) (emphasis added); see also *Adams v Detroit*, 232 Mich App 701, 706; 591 NW2d 67 (1998) (using the same quote from *Michigan Millers, supra*, and also noting that a party “need not know of the invasion of a legal right in order for the claim to accrue”). Because this case is essentially a contract action, and given the circumstances involved, we decline to hold that the trial court erred in rejecting application of the discovery rule.⁴

⁴ To the extent that there may exist case law arguably supporting application of the discovery rule to a claim of rescission, we have found that the rescission claims are properly dismissed under MCR 2.116(C)(8) for the reasons stated below.

The next matter concerns fraudulent concealment under MCL 600.5855.⁵ Plaintiff argues that the various limitation periods applicable in this case were tolled until December 2001 by operation of MCL 600.5855. We disagree.

As an initial matter, we note that this issue is not preserved for appellate review because it was not raised before and decided by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Nonetheless, even if this matter were properly preserved, plaintiff has failed to sufficiently allege fraudulent concealment by defendant.

Under MCL 600.5855, the statute of limitations is tolled when a party conceals the fact that the plaintiff has a cause of action. *Sills v Oakland Gen Hosp*, 220 Mich App 303, 310; 559 NW2d 348 (1996). “The plaintiff must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment and must prove that the defendant committed affirmative acts of misrepresentation that were designed to prevent subsequent discovery.” *Phinney v Perlmutter*, 222 Mich App 513, 562-563; 564 NW2d 532 (1997). “Mere silence is insufficient” to constitute fraudulent concealment of a claim. *Sills, supra* at 310.

Although plaintiff pleaded a claim of *fraudulent inducement* in its complaint, nowhere did plaintiff’s complaint contain allegations that defendant had *fraudulently concealed* the existence of any of plaintiff’s causes of action. Thus, plaintiff failed to plead sufficient facts to show fraudulent concealment in this case. *Phinney, supra* at 563. Nor has plaintiff cited any record evidence to support its contention that defendant fraudulently concealed the alleged underpayments or otherwise acted to conceal the factual bases for plaintiff’s claims. In fact, plaintiff argues on appeal only that defendant’s silence was sufficient to invoke the fraudulent concealment statute and to toll the applicable limitation periods. However, as noted above, mere silence is insufficient to invoke the tolling provision of MCL 600.5855. *Sills, supra* at 310. Quite simply, plaintiff is not entitled to avail itself of the fraudulent concealment tolling provision of MCL 600.5855 in this case.

We now examine the various causes of action. The claims that the trial court summarily dismissed, except for one, were dismissed on the basis that they were time-barred. We hold that a number of the claims are also properly disposed of pursuant to MCR 2.116(C)(8). See *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000) (we may,

⁵ MCL 600.5855 provides:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

ordinarily, affirm an order granting summary disposition on alternative grounds or reasoning); see also *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998). Indeed, some of the claims that were dismissed only in part, should have been dismissed in total for failure to state a claim, and this includes the claims for conversion, unjust enrichment, and constructive trust.⁶

The two rescission claims, as alleged in the complaint and which included rescission based on mistake and rescission based on failure to act as a prudent operator, failed to state causes of action as a matter of law. With respect to the claim of rescission based on mistake, such an action cannot be maintained except when there is mutual mistake or unilateral mistake induced by fraud. *Goodwin, Inc v Orson E Coe Pontiac, Inc*, 392 Mich 195, 218; 220 NW2d 664 (1974); *Windham v Morris*, 370 Mich 188, 193; 121 NW2d 479 (1963); *Kruger v Agnor*, 321 Mich 131, 135-136; 32 NW2d 365 (1948); *Trembert v Mott*, 271 Mich 683, 692; 261 NW 109 (1935). Here, the mistake-based rescission count alludes to mistake on the part of plaintiff but not defendant; therefore, mutual mistake is not alleged. Further, in the context of unilateral mistake, there is no language in the count alleging fraudulent activity. Moreover, contractual mistake relates to a belief that is not consistent or in accord with the facts. *Lenawee Co Bd of Health v Messerly*, 417 Mich 17, 24; 331 NW2d 203 (1982). “The erroneous belief of one or both of the parties must relate to a fact in existence at the time the contract is executed.” *Id.*; see also *Gortney v Norfolk & Western R Co*, 216 Mich App 535, 542; 549 NW2d 612 (1996) (mistake must concern existing facts). Contentions related to the occurrence or nonoccurrence of future events cannot serve as a basis to rescind because of mistake. *Alibri v Detroit/Wayne Co Stadium Auth*, 254 Mich App 545, 563; 658 NW2d 167 (2002), rev’d on other grounds 470 Mich 895 (2004). Plaintiff’s complaint speaks of its mistaken belief that defendant would make proper payment in the future in accord with the contract; there is no allegation regarding a mistake concerning existing facts. Accordingly, the mistake-based rescission counts fails to state a cause of action.

With regard to the claim of rescission based on failure to act as a prudent operator, plaintiff is apparently suggesting that rescission of the lease agreement can be based on negligence, with the negligence being the failure to pay the full amount of the royalties. We are unaware of any authority supporting such a cause of action, nor does plaintiff cite supporting authority; therefore, and limiting ourselves to the manner in which plaintiff framed the allegations in the count, we conclude that plaintiff failed to state a claim on which relief can be granted.

We also conclude that plaintiff’s trespass claim fails to state a cause of action and was therefore subject to dismissal under MCR 2.116(C)(8). Additionally, the statute of limitations

⁶ While an argument under MCR 2.116(C)(8) was only made and addressed in connection with the second count for rescission, we may overlook the preservation deficiency if consideration of the issue is necessary to a proper determination of the appeal or if a question of law is involved. *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

barred the action in light of the fact that we are not employing the discovery rule. In the complaint, plaintiff alleged that the lease agreement and addendum were null and void because plaintiff mistakenly believed that defendant would properly calculate the royalties. Therefore, the theory goes, plaintiff owned at all times one-hundred percent of the oil and gas interests underlying the land, and thus defendant's operations on the land constituted a trespass.

First, we note that this claim is simply a reformulation of the mistake-based rescission claim that we have already rejected. Accordingly, plaintiff cannot proceed with its trespass claim on the basis that the lease agreement was null and void. Furthermore, "[r]ecover for trespass to land in Michigan is available only upon proof of an unauthorized direct or immediate intrusion . . . onto land over which the plaintiff has a right of exclusive possession." *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 67; 602 NW2d 215 (1999). A trespass claim cannot be sustained when there is no evidence of any unauthorized entry onto the land of another. *Gelman Sciences, Inc v Dow Chemical Co*, 202 Mich App 250, 253; 508 NW2d 142 (1993). We conclude that the allegations that defendant did not fully pay royalties due under the lease agreement, which agreement authorized defendant to enter plaintiff's land under a separate granting clause, did not negate said clause or the authorization to enter the land, but simply gave rise to a breach of contract action subject to the applicable statute of limitations. As such, plaintiff has failed to state a cause of action for trespass.

Moreover, the parties agree that the period of limitations for trespass is three years, MCL 600.5805(10). Because we are not applying the discovery rule, the claim accrued at the latest in 1998 when the lease period ended. Because the action was not filed until December 2003, the trespass claim was time-barred.

With respect to plaintiff's conversion claim, although the trial court allowed the claim to survive in part under a statute of limitations analysis, we hold that the claim should have been dismissed in its entirety under MCR 2.116(C)(8). In *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992), our Supreme Court stated:

In the civil context, conversion is defined as any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein. In general, it is viewed as an intentional tort in the sense that the converter's actions are willful, although the tort can be committed unwittingly if unaware of the plaintiff's outstanding property interest.

Here, plaintiff's complaint did not allege that defendant exerted dominion over plaintiff's personal property; rather, defendant was merely accused of failing to pay all of the royalties due under the contract. Plaintiff did not allege that the oil and gas were wrongfully converted, but instead alleged that royalty payments were not made and that this, the retention of the payments, constituted the conversion. In other words, there was conversion of the royalty payments. This is analogous to stating that, anytime someone fails to pay under a contract, the breaching party's retention of the funds or payment equates to conversion of those funds. As framed in plaintiff's complaint, this is simply not a case of conversion. Plaintiff's complaint fails to allege a cause of action for conversion.

We next address the cause of action for fraud, which is framed in a manner indicating intentional misrepresentation and fraud in the inducement, both arising out of the lease transaction that occurred in 1976. Claims for fraud are subject to the six-year period of limitations contained in MCL 600.5813. *Badon v Gen Motors Corp*, 188 Mich App 430, 435; 470 NW2d 436 (1991); *Kwasny v Driessen*, 42 Mich App 442, 446; 202 NW2d 443 (1972). A claim accrues “at the time the wrong upon which the claim is based was done regardless of the time when damage results.” MCL 600.5827. Our Supreme Court has specifically held that the common-law discovery rule does not apply to claims of fraud or misrepresentation. *Boyle v Gen Motors Corp*, 468 Mich 226, 227, 231-232; 661 NW2d 557 (2003). Therefore, plaintiff’s reliance on the letter from Odinga in 2001 relative to a discovery argument is misplaced. Plaintiff’s complaint focused solely on misrepresentations and fraud at the time the lease agreement was executed, which, according to plaintiff, induced it into executing the agreement. There are no allegations that each payment over the course of the lease period constituted a misrepresentation of the highest price being paid to others in royalties. Therefore, plaintiff’s claim, as structured in the complaint, accrued in 1976. Accordingly, the fraud claim was time-barred regardless of the date, consistent with *Boyle, supra*, that plaintiff discovered the fraud or misrepresentation.

We now address the breach of contract claim. Plaintiff argues that the trial court erred in granting partial summary disposition of its claim for breach of contract, improperly limiting the scope of the claim to acts or omissions that occurred after December 3, 1997. We disagree.

The trial court determined that the lease agreement, which required regular monthly or quarterly royalty payments to plaintiff, was analogous to an installment contract. An installment contract is defined as “[a] contract requiring or authorizing the delivery of goods in separate lots, or payments in separate increments, to be separately accepted.” *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 532 n 5; 676 NW2d 616 (2004), quoting Black’s Law Dictionary (7th ed) (emphasis deleted). This Court has previously determined that certain types of contracts requiring regular or periodic payments are similar to or analogous to installment contracts. *H J Tucker & Assoc, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 562-563; 595 NW2d 176 (1999); *Adams, supra* at 704-705; *Harris v Allen Park*, 193 Mich App 103, 107; 483 NW2d 434 (1992). Under such contracts requiring regular periodic payments, a separate and distinct breach of contract claim accrues with each allegedly deficient payment. *H J Tucker, supra* at 562-563.⁷ “[E]very periodic payment made that is alleged to be less than the amount due . . . constitutes a continuing breach of contract and the limitation period runs from the due date of each payment.” *Harris, supra* at 107; see also *H J Tucker, supra* at 563. The lease agreement in this case required defendant to make regular royalty payments to plaintiff on either a monthly or quarterly basis. Therefore, although not technically an installment contract in the strictest sense of the term, the lease agreement was in the nature of an installment contract. Each

⁷ MCL 600.5836 provides that “claims on an installment contract accrue as each installment falls due.”

allegedly deficient royalty payment made to plaintiff constituted a separate and discrete breach of the lease agreement.

The period of limitations for actions alleging breach of contract is six years. MCL 600.5807(8); *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 245; 673 NW2d 805 (2003). As indicated above, the discovery rule is inapplicable in contract actions. Thus, under MCL 600.5827, the breach of contract claim accrued “at the time the wrong upon which the claim is based was done regardless of the time when damage results.” Therefore, for a contract requiring separate periodic payments, the period of limitations begins to run at the time of each individual breach. *H J Tucker, supra* at 563; *Harris, supra* at 107. The six-year period of limitations began to run separately at the time of each alleged underpayment in this case.

Plaintiff argues, however, that defendant was under a “continuing obligation” until the lease was terminated in 1998 to pay all past-due royalties. Plaintiff thus argues that all claims for breach of contract accrued in 1998 at the earliest, when the alleged “continuing obligation” finally ended. Plaintiff contends that its claim was therefore timely because defendant remained in breach of this “continuing obligation” to correct past underpayments until 1998.

This argument is functionally identical to the “continuing wrongs” argument rejected in *Blazer Foods, supra*. The “continuing wrong” doctrine provides that a claim based on the defendant’s wrongful conduct will re-accrue each day that the wrongful conduct is continued. *Blazer Foods, supra* at 246, 248. The statute of limitations will not commence until the wrong is abated. *Id.* at 246. Continual tortious acts must be shown, not continuing harmful effects from an original completed act. *Id.* Application of the “continuing wrong” doctrine has been rejected in the context of claims for breach of contract. *Id.* at 251 (“Plaintiffs have identified no cases extending the continuing wrong or continuing services theories to a situation in which a party to a contract fails to perform adequately under the contract.”). Accordingly, plaintiff cannot rely on its “continuing obligation” theory in this instance because the “continuing wrong” doctrine does not apply to extend the period of limitations in a breach of contract action.

The trial court properly bifurcated plaintiff’s breach of contract claim, separating it into (1) claims for alleged underpayments that occurred more than six years before this action was filed, and (2) claims for alleged underpayments that occurred within the six years immediately preceding the filing of this action. The court properly dismissed as time-barred those claims that related to any alleged underpayments that occurred more than six years before this action was filed. Partial summary disposition under MCR 2.116(C)(7) was properly granted.

With respect to the claim for unjust enrichment, we conclude that the entire claim should have been dismissed because, in part, it was time-barred, and, in part, there was a failure to state a claim because of the existence of an express contract.

A claim for unjust enrichment is the equitable counterpart of a legal claim for breach of contract. Our Supreme Court “has long recognized that statutes of limitation may apply by analogy to equitable claims.” *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 127 n 9; 537 NW2d 596 (1995). “If legal limitations periods did not apply to analogous equitable suits, ‘a plaintiff [could] dodge the bar set up by a limitations statute simply

by resorting to an alternate form of relief provided by equity.’” *Id.*, quoting *Lothian v Detroit*, 414 Mich 160, 169; 324 NW2d 9 (1982). Thus, when an equitable claim would provide relief that is analogous to the relief available under a similar legal claim, courts typically apply the legal claim’s statute of limitations to the equitable claim as well. *Id.* Laches, however, as opposed to an analogous statute of limitations, will control if “compelling equities” are established. *Id.* at 170. Not finding compelling equities here, we choose to apply the same six-year period of limitations to the unjust enrichment claim as that applicable to plaintiff’s breach of contract claim. See *Huhtala v Travelers Ins Co*, 401 Mich 118, 125; 257 NW2d 640 (1977) (“We are of the opinion that the time for bringing an action for promissory estoppel is governed by the contract statute of limitations, six years, and that plaintiffs’ action was therefore timely commenced.”).

While this ruling would leave open a diminished claim for unjust enrichment arising after December 3, 1997 (within six years of the complaint), any potentially surviving claim must also succumb given the law on unjust enrichment. The equitable claim of unjust enrichment is based on the theory that the law will imply a contract in order to prevent the unjust enrichment of another party. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). However, a contract to prevent unjust enrichment will be implied “only if there is no express contract covering the same subject matter.” *Id.* When there is an express contract covering the same subject matter, summary disposition of the unjust enrichment claim is properly granted. *Id.* at 479. The express provisions of a lease agreement constitute an express contract within the meaning of this rule. Considering that the breach of contract claim can be pursued as likewise limited by the statute of limitations as reflected in the trial court’s ruling, any accompanying claim for unjust enrichment covering the same subject matter and that same time period, i.e., after December 3, 1997, must fail because there is no legally cognizable right to recovery.⁸

With respect to the claim for a constructive trust, we conclude that the entire constructive trust claim should have been dismissed. Plaintiff argues that the trial court erred in granting partial summary disposition under MCR 2.116(C)(7) of its constructive trust claim, improperly limiting the scope of the claim to acts or omissions that occurred after December 3, 1997.

⁸ We have acknowledged the general rule that a claim for unjust enrichment cannot survive when there exists an express contract covering the same subject matter. However, we note that case law also provides that if the contract is void or unenforceable, the rule does not apply. See *Biagini v Mocnik*, 369 Mich 657, 659-660; 120 NW2d 827 (1963) (recovery in quantum meruit allowed where the plaintiff performed under an express contract that is not enforceable because of a statute that bars recovery under terms of the contract); *Ordon v Johnson*, 346 Mich 38, 48-49; 77 NW2d 377 (1956); *VanderHoef v Parker Bros Co, Ltd*, 267 Mich 672, 680-681; 255 NW 449 (1934). Any contract action arising after December 3, 1997, can be pursued; therefore, the contract is not void or unenforceable for that time period. Although the contract is unenforceable for the period on or before December 3, 1997, this is because of the statute of limitations, which we find equally applicable here to plaintiff’s unjust enrichment claim.

Plaintiff argues that because defendant owed it a fiduciary duty, a constructive trust arose over the allegedly unpaid past-due royalties. A court may impose a constructive trust when necessary to do equity or avoid unjust enrichment. *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993). However, an independent action for equitable relief will not lie where there is a full, complete, and adequate remedy at law, absent a showing that there is some feature of the case peculiarly within the province of the court of equity. *ECCO, Ltd v Balimoy Mfg Co, Inc*, 179 Mich App 748, 751; 446 NW2d 546 (1989); *Basinger v Provident Life & Accident Ins Co*, 67 Mich App 1, 5-6 n 11; 239 NW2d 735 (1976). When a plaintiff has set forth both legal and equitable claims seeking identical relief and covering the same subject matter, the proper course is generally dismissal of the equitable claim. See *Slusher v Frome*, 364 Mich 110, 111-112; 110 NW2d 672 (1961).

For the reasons set forth above regarding plaintiff's equitable claim of unjust enrichment, we impose a six-year statute of limitations on the constructive trust claim, which effectively bars recovery under that theory relative to deficient royalty payments made on or before December 3, 1997. With respect to constructive trust claims after said date, plaintiff has an adequate remedy at law in the form of the breach of contract action. Accordingly, the entire constructive trust claim is dismissed.

In sum, we affirm the dismissal of the rescission, fraud, and trespass claims in their entirety. We further affirm the partial dismissal of the breach of contract action, leaving intact claims for breach of contract arising after December 3, 1997. Finally, we reverse the partial dismissal of the unjust enrichment, conversion, and constructive trust claims, in that, those claims should have been dismissed in their entirety. Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Jessica R. Cooper